IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 217 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHOPALSING RUPSING SHEKHAVAT - Appellant(s)
Versus
INDARSING PARBATSING PAWAR & 2 - Defendant(s)

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Appearance :

MR VC DESAI for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MR KN PATEL for Defendant(s) : 1 - 3.
SERVED BY AFFIX.(N) for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2006

ORAL JUDGMENT

Present appeal has been filed by the appellant herein (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned

City Civil Court at Ahmedabad dated 22-6-1987 passed in Civil Suit No.1935 of 1984 in dismissing the said suit.

2. The plaintiff filed aforesaid civil suit in the City Civil Court at Ahmedabad for a declaration that he is owner of one motor truck bearing registration No. GTF 2093 and for its custody from the defendants and for damages in the sum of Rs.40,000/- towards the mesne profits at the rate of Rs.5,000/- per month from 14th August, 1983 till date of the suit and for further mesne profits at the rate of Rs.5,000/- per month from the date of suit till recovery of the custody.

3. It was averred in the plaint that he was formally serving in a mill and after retirement therefrom started the work of truck driving and transport business. According to him, his retirement from service, he purchased the suit truck for Rs.55,000/- from one Yasinbhai Kabadi through one Chhaganbhai Vanjara. That said Chhaganbhai arranged for the loan of Rs.35,000/- for the plaintiff in respect of the suit truck from defendant No.2 on its hypothecation. He thereupon, executed the hypothecation deed in favour of defendant No.2. Defendant No.3 was the partner of defendant No.2

firm. At that time, he obtained the plaintiff's signature on two blank TTO forms. The suit truck has been in his name in the RTO records and he was its owner. It was further averred in the plaint that after its purchase, it needed some repairs and he was also required to purchase certain other materials and tyres and therefore, he obtained Rs.10,600/- from one Jailal Tulsidas somewhere in August, 1983. It was thereupon agreed that the transport business by means of the suit truck would be carried on in partnership between the plaintiff and said Jailal. Both agreed to distribute profits in the ratio of 70% for the plaintiff and 30% for the other partner. After starting the transport business with the help of the suit truck, defendant Nos.1 and 3 approached the plaintiff at his residence and informed him that defendant No.3 was in need of one truck on hire for bringing marble stones from Rajasthan and therefore, he thereupon agreed for hiring out his truck for the purpose as both defendant Nos.1 and 3 were known to him. The suit truck was handed over to defendant No.1 for the purpose of defendant No.3's work. The said defendants did not turn up after taking away the suit truck and therefore, he went to the office of defendant No.2 for inquiry but neither defendant No.1 nor defendant No.3 was found. He

again inquired and he was informed that the said truck had met with an accident near Udaipur and it was held up there for repairs and that the suit truck would be brought to Ahmedabad by defendant No.1 within 10 days. It was further averred that when the possession of the suit truck was not handed over and he felt that he was cheated by the defendants, he filed criminal complaint against the defendants in the court of learned JMFC, Narol on 16th December, 1983 for the offence punishable under the provisions of the Indian Penal Code. That thereafter defendant No.1 filed one suit bearing Civil Suit No.416 of 1984 against the plaintiff restraining the plaintiff from recovery of the custody of the suit truck from defendant No.1 and as the plaintiff felt that the defendants in collusion with each other were out to deprive him of his suit truck which was his only source of livelihood and therefore, he filed the aforesaid suit for the aforesaid relief and for damages.

4. The suit was resisted by the defendants who filed common written statement at Exh-18. The learned trial Court raised the issue at Exh-60. The plaintiff examined himself at Exh-81 and three other witnesses at Exh-85, 86 and 89. On the side of defendants, they examined

defendant No.1 at Exh-93 and other two witnesses at Exhs-110 and 120. The learned trial Court after considering the evidence and giving opportunity to all the parties held issue Nos.1 and 2 in negative and issue No.3 in affirmative and dismissed the suit. Since, the defendants did not press their relief based on counterclaim, the learned trial Court did not decide the said issue. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court in dismissing the aforesaid suit, the plaintiff has preferred the present appeal.

5. It is submitted that the learned trial Court has erred in deciding the issue Nos.1 to 3 and 5 against the plaintiff. It is also further submitted that the learned trial Court has materially erred in holding that there is inconsistency between Exh-102 (alleged dissolution of deed) and Exh-104 (alleged sale deed). It is also further submitted that the learned trial Court has materially erred in holding that the plaintiff sold the truck to respondent No.1. It is also further submitted that the learned trial Court has misread and misconstrued Exh-132 as it was his case that his signature was taken on blank papers. Therefore, it is requested to allow the present

appeal.

6. Shri Patel, learned advocate appearing on behalf of the respondents – original defendants has supported the judgment and decree passed by the learned trial Court and has submitted that on appreciation of evidence, the learned trial Court has rightly dismissed the suit by holding that the plaintiff sold the truck in question to defendant No.1. Therefore, it is requested to dismiss the present appeal.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. Defendant No.1 produced the bills showing his contribution towards the expenses incurred in the suit truck at Exhs-96 to 101 and this bill comes to Rs.10,000/- approximately. There was no cross-examination of defendant No.1 by the plaintiff with respect to payment of all these bills. However, on appreciation of evidence, the learned trial Court came to the conclusion that there was no partnership between defendant No.1 and plaintiff and Jailal. However, on appreciation of evidence and considering the sale deed at Exh-104, the

learned trial Court has rightly come to the conclusion that the defendant No.1 has purchased the truck in question from the plaintiff. I have gone through the judgment and decree as well as the relevant evidence oral as well as documentary. Considering the sale deed at Exh-104 and other circumstances, the learned trial Court has rightly held that the truck in question was sold by the plaintiff to defendant No.1 and therefore, the learned trial Court has rightly dismissed the suit. This Court is in complete agreement with the reasoning and finding of the learned trial Court in dismissing the suit.

9. For the reasons as stated above, the appeal fails and the same is accordingly dismissed. No costs. Ad interim relief if any stands vacated forthwith.

(M.R.SHAH,J.)

shekhar/-